

CERTIFICATION OF PERSONNEL BOARD RECORDS

I certify that attached hereto is a true and correct copy of the Findings of Fact, Conclusions of Law and Recommended Order and Final Order in the cases of **LESLIE GLASS VS. DEPARTMENT OF MILITARY AFFAIRS (APPEAL NOs. 2018-031 and 2018-076)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 7th day of May, 2019.



MARK A. SIPEK, SECRETARY
KENTUCKY PERSONNEL BOARD

Copy to Secretary, Personnel Cabinet

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NOS. 2018-031 and 2018-076**

LESLIE GLASS

APPELLANT

VS.

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER**

DEPARTMENT OF MILITARY AFFAIRS

APPELLEE

This matter involves consolidated appeals filed on February 26, 2018, and April 17, 2018, that came on for an evidentiary hearing on October 29 and 30, 2018, before E. Patrick Moores, Hearing Officer, at the offices of the Kentucky Personnel Board, Frankfort, Kentucky. The proceedings were recorded by audio-video equipment pursuant to the authority found at KRS Chapter 18A.

The Appellant, Leslie Glass, was present and was represented by the Hon. Paul Fauri. The Appellee, the Department of Military Affairs (hereinafter "Department"), was represented by Hon. Charla R. Sands.

I. STATEMENT OF THE CASE

1. The first appeal filed by **Leslie Glass** concerned the Department placing her on special leave for investigative purposes, and the second appeal was on the Department's decision to dismiss her, stated in a letter dated March 22, 2018, from Michael A. Jones, Executive Director of the Department's Office of Management & Administration. Jones' letter stated that, pursuant to KRS 18A.095, 101 KAR 2:095, Section 9, and 101 KAR 1:345, Section 1, she was being dismissed for creating a hostile work environment by her intimidating and aggressive behavior towards her coworkers.

2. A pre-hearing conference was held before the Kentucky Personnel Board on May 22, 2018, following which an Interim Order was issued scheduling the matter for an evidentiary hearing on September 18-20, 2018. On June 21, 2018, the Appellant filed a Motion to Sustain Appeal as a Matter of Law concerning the matter of the dismissal and the manner in which she was placed on special leave for investigative purposes as being procedurally deficient. The Appellant argued that the letter placing her on special leave for investigative purposes failed to provide any specific information for the reason for the investigation, and that the letter giving notice of her dismissal failed to give the specific notice requirements mandated by KRS 18A.095(2) and (7) of the names, dates, times, and places underlying the allegations against her. After a hearing officer for the Board reviewed the record and the briefs of the parties, an Interim Order was entered on August 24, 2018, overruling the motion on the basis that during the investigatory leave Glass was not given any loss or reduction in pay and that the Department met a minimal "proper cause" threshold. The Hearing Officer determined that the investigative leave was slightly more than a *de minimus* penalization, and that the dismissal presented genuine issues of material fact including, but not limited to, the factual sufficiency of the allegations contained in the Department's letters. On August 28, 2018, the Board subsequently entered an

Order rescheduling the evidentiary hearing to October 29, 30, and 31, 2018.

3. The evidentiary hearing was conducted on October 29 and 30, 2018. At issue was whether the Department's dismissal of Glass was for just cause and was neither excessive nor erroneous. The burden of proof was on the Department to prove the dismissal was properly issued, by a preponderance of the evidence. Following the presentation of all the evidence, the parties were provided the opportunity to submit legal briefs on the evidence and argue the law on the matter, and, on October 31, 2018, the Board issued a Post Hearing Order setting forth a briefing schedule.

II. SUMMARY OF EVIDENTIARY TESTIMONY

1. The first witness for the Department was **Joseph Douglas Sanderson**, Director of Facilities supporting the Kentucky National Guard. His duties concern property management and taking care of maintenance, including procurement, construction, administration, warehouses, vehicles, and security. He testified that he received several comments concerning Glass, although he could not state the dates the complaints were made. He stated that he received a verbal complaint from Crystal Sorrell about Glass, however, she did not want to put her complaint about Glass in writing, and that he felt her statement was hearsay and verbally insufficient. Further, he stated that, although he did not take any action, he felt there were enough allegations that needed to be looked into. He requested an investigation into the complaint by the Department, as he felt the matter should be handled at departmental level.

2. Sanderson testified that he received "feedback" about problems with Glass from Jackie Watkins, Facilities Branch Manager, and he felt that it was appropriate to bring Watkins and Glass in to discuss the matter. He said the discussion focused primarily on the workload, which they considered to be too much. He testified that Watkins and Glass received the same workload as the other employees, which could not be reduced. He stated that he did not address resolving the workload and that he talked to them about being able to get along. He said that he evaluated the information that he received from the two and that he felt the allegations of wrongdoing were insufficient. He took no action, although he stated that he thought that Glass was not being included as a member of the team.

3. Sanderson testified that he did not document any information on the complaint he received from Watkins, and that he told Watkins and the others that he could not act on just hearsay without a written complaint. He said that he did not ask Watkins how she was intimidated by Glass, and reiterated to her that she would have to give a written statement in order for any action to be taken. He stated that what he was told about complaints from third parties, including Sorrell, which he considered hearsay, and that he made no documentation of the complaints.

4. Sanderson stated that he knew there had to be substantial information in order for any action to be taken against Glass. He said that he thought that Sorrell did not want anyone to discuss with Glass that she had complained about her, as each of the people making the complaints indicated that they were scared of Glass, including Watkins. He said that all the complaints seemed to be pointed toward Glass, that he handled the matter the best way he knew how, and that he did not discuss the allegations with Glass. He also said that he requested guidance from the Department's personnel section and that he had no further involvement in the matter, beyond drafting the investigative leave letter and delivering it to Glass.

5. Sanderson testified that several employees accused Glass of stating that she would "blow this place up," but there was no documentation provided of the accusation and that he did not look into it any further, nor did he feel he was obligated to do so. He said he requested that the complaining employees document their accusations, but that he never saw any documentation.

6. **Jackie Watkins** served the Department as Facilities Branch Manager until her retirement on August 1, 2018. She reported to Sanderson and supervised Glass, and she stated that their relationship started well. However, she said that things became frustrating to Glass when she began working on RFQ Solicitations for funding contracts, which Watkins had to review. She testified that when she rejected one back to Glass, she became very frustrated and came to Watkins' office, and very loudly complained that she did not understand the format, which she thought was stupid, and that she did not think she could do the work. Watkins said that she could also tell that Glass was feeling overwhelmed by the workload required by the solicitations. She said that Glass claimed the reason she made mistakes was because she was given too much to do. She said that Glass was screaming and yelling at her, and that was the first time she had ever been screamed at by an employee. When she worked up the year-end performance evaluation on Glass, she expressed concern in the evaluation that Glass needed to work on her communication skills. She said that Glass was very upset about the score Watkins gave her on the evaluation.

7. Watkins testified that she had to spend time out of the office because her father had a heart attack. When she returned, she received several complaints about Glass and that a couple of employees had expressed concern for their safety. However, nothing was reduced to written statements and, because the employees that made the complaints refused to put their allegations in writing, she could not take the verbal complaints any further.

8. Watkins testified that on February 6, Crystal Sorrell came to her office crying and said that she could not work anymore. Ms. Sorrell even felt threatened to go to the bathroom by herself. Watkins said, at that point, she felt it was her duty to take the issue further. She testified that she could tell Glass was feeling overwhelmed with the required workload on documenting solicitations, that she initially tried to redistribute the workload for Glass, and personally took over working on several solicitations and conducting site visits assigned to Glass.

9. Watkins stated that when she did the year-end evaluations, she asked the HR person, Dana Gates, to sit in on the evaluations. She testified that Glass took issue with her evaluation and began screaming, yelling, and cursing, stating she had given 110% to her work. Watkins said she tried to address all of Glass' comments and disputes as to why she should have a higher score than what Watkins gave her. Watkins explained that she thought her evaluation was fair. Glass refused to sign the evaluation, saying she did not agree with any of it, and left taking all the documentation with her. Watkins said it was the first time Glass raised her voice to her, that she became scared of Glass, and felt threatened by her, adding that, in her 23 years as a supervisor, she never had an employee act like Glass. Watkins testified that other employees were scared of Glass, particularly when she allegedly threatened to "blow this place up," although Watkins did not report the threat because she did not hear it. Watkins further testified that she had no input in the investigation into the allegations against Glass, nor was she involved in the leave or termination letters.

10. **Crystal Sorrell** was with the Department of Military Affairs from July 2012 until February 28, 2018, as an Administrative Specialist III, reporting to Jackie Watkins. She worked with Glass, and stated that she was mostly fearful of her. She stated that Glass bragged about a time she intimidated a coworker and made her cry and about another occasion when she beat up her husband when she caught him in bed with another woman. She also said she overheard Glass say that if she received a bad evaluation she would "blow the place up." Sorrell stated that she was not a strong person and felt fearful of Glass, but that she did not report this to anyone.

11. Sorrell testified that she tried to avoid conversing with Glass out of fear of being verbally "shot down" by her. She said she told Watkins that she could not work with Glass, and that she was even afraid of going to the bathroom, unless she did so with a coworker as part of a "buddy system." However, she acknowledged that Glass' office was not across from the women's bathroom and that she never ran into Glass when going to the bathroom. Sorrell also said she would overhear arguments between Glass and her coworkers, and that her office was next to that of Watkins. On one occasion, she overheard yelling between Glass and Watkins, however, she was unable to recall the exact date these exchanges took place.

12. Sorrell testified she would occasionally go to Glass' office and chat with her and/or deliver payment documents for her to work on. She also said that they occasionally went to lunch together, but mostly around holidays and special occasions. She said that there were times that she felt she could not turn work over to Glass for fear that it would make her mad. However, she acknowledged that Glass never did anything to her, and that she did not remember any cursing by Glass.

13. Sorrell said she left the Department of Military Affairs because there was too much "stuff" for which she was being blamed by Glass, over which she had no control. She also testified that Jackie Watkins had made people mad and that it was a "rocky work environment." She decided to leave because she was stuck in a position that she did not want to be involved any longer.

14. **Kellie Shannon Steele** is an Administrative Specialist III with the Department and reports to Watkins. She testified that she worked in the same group with Glass and shared an office with Crystal Sorrell, but that she was not intertwined with what Glass did and had no working relationship with her. Steele said that she heard of confrontations and awkward occasions between Glass and other coworkers and that she overheard an argument between Glass and Watkins. She also stated that she was asked on occasion by Sorrell to accompany her to the bathroom because she was afraid of Glass.

15. Steele testified about an incident when the group were at a procurement conference in Louisville and all went together to a restaurant named "Underneath the Bridge," where Watkins offered to pay for their lunch. As they were leaving, she stated that she asked Watkins about why she was paying when they could obtain state reimbursement for their meal. Glass became upset as they were walking back to the conference, pulled her arm behind her back, and told her "don't cheat me out of a free lunch again." She said that she apologized to Glass and that she subsequently reported the arm grabbing by Glass to Joe Sanderson. She said that Sanderson asked her write a statement about the incident, but she declined to do so, telling Sanderson that she did not want to have to deal with any blow-back from Glass over the matter.

16. **Michele Guenot** has been employed with the Commonwealth of Kentucky for over 15 years, primarily in the Finance and Administration Cabinet. She most recently worked with the Department under the supervision of Watkins as a coordinator of state and federal contracts, which she had to review the documentation and approve. She testified that as an approver, she was required to spend a lot of time reviewing contracts and other documents and that she often had to reject the documentation prepared by the staff, including Glass. These rejections would result in constant arguments from Glass. She testified that she eventually told Watkins that she would no longer approve the documents prepared by Glass. She testified that almost all communications with Glass turned into arguments and, that although she loved her job, she got tired of all the bickering and drama.

17. Guenot testified that Watkins was her supervisor and that she had no problems working with her, but that she often observed Glass disagree with Watkins on how to do her job. She testified Watkins taught Glass how to do her job and that Glass continuously had difficulties with how Watkins told her to do her work. She said that following a confrontation between Watkins and Glass in the summer of 2017, she became concerned about Glass and determined it was necessary that she lock her spreadsheets after Glass confronted her about her disapproval of her documentation on a contract.

18. Guenot also testified about the lunch the staff attended in Louisville during the procurement conference and the alleged arm grabbing incident between Steele and Glass. She said that as they were walking back to the conference from lunch she observed Glass walking directly behind Steele. She said that when she looked back a second time, she observed that Steele had a "deer in headlights look" about her, but that she did not think much else about it.

19. **Dana Gates** is the Department's Procedures Development Coordinator, reporting to Joe Sanderson. She testified that she overheard confrontations between Watkins and Glass, and that she determined the basis of most of the disputes came from Glass being overwhelmed with the workload. She testified that because Watkins was going to retire, Sanderson asked her to sit in on the evaluations being conducted by Watkins in order to establish continuity in the process. As a result, she was asked to sit in on the evaluation Watkins did with Glass, although she did not participate in the evaluation process and only took notes. She said that, during the evaluation, whenever Watkins tried to explain the requirements of the work, Glass got very upset, but she noted that they seemed to resolve the issues raised. She said she did not know what score was given to Glass.

20. Gates testified that she never heard Glass make the statement that if she did not get a good score on her evaluation that she was going to "blow up the building;" however, she was later told by Kellie Steele about the statement that Glass made. Gates testified that she constantly told the workers making complaints about Glass that they needed to make a written statement about the alleged incidents and turn it in to Sanderson, but they did not want to do it. She also said she was told that Sorrell had a buddy system to go with her to the bathroom, which she said she thought was silly and unnecessary. Gates said she had "good interactions" with Glass and that, while she did not work with her, they would periodically "chit-chat," but nothing work related. She said she was surprised that Glass was terminated.

21. **Crystal Simpson** works in the Department of Military Affairs as an Administrative Branch Manager over personnel and payroll matters of the Department. She introduced into evidence an acknowledgement signed by Glass during her employment orientation that she received the Employee Handbook, which contained all the Department's policies. She also introduced a series of email communications between her and Rosemary Holbrook, Assistant General Counsel in the Personnel Cabinet's Office of Legal Services. Such emails included a forwarded email she received from Sanderson reporting a verbal complaint he received from Crystal Sorrell about Glass, stating that she (Sorrell) was leaving the Department because of her fear of Glass, and that she dreaded coming to work each day knowing her job made her communicate with Glass. He also reported that Sorrell addressed the incident at lunch during the purchasing conference, where Glass grabbed Kellie Steele's arm, pulled it behind her back, and threatened her about cheating her of a free lunch, but neither Sorrell nor Steele would make a written statement about the incident for fear of retaliation from Glass. Sanderson said in the email that he was looking for guidance as to his options.

22. Simpson said she prepared a draft of the letter that was sent to the Personnel Cabinet: 1) giving notice to Glass that she was being placed on special leave pending an investigation into allegations of misconduct and workplace violence against her and 2) citing the statutes and administrative regulations supporting the need for the investigation. The letter was finalized and dated February 9, 2018, and signed by Michael Jones, the Department's Executive Director. Simpson testified that she had no involvement in the investigation, other than the preparation of the February 28, 2018 letter that was provided to Glass, giving her notice of the intent to dismiss her. Simpson said that Glass was given an opportunity to respond in a pre-

termination hearing, but she did not respond to the allegations against her, leaving the matter to her attorney. Following that meeting, a letter of dismissal, dated March 22, 2018, was sent to Glass informing her that her employment with the Department was being terminated for violation of 101 KAR 2:095, Section 9, 101 KAR 1:345, Section 1, and creating a hostile work environment.

23. **Steven Phillip Bullard** is the Department's Director of Administrative Services and EEO Coordinator, which requires him to perform multiple roles. He testified that he was requested by Sanderson to do an assessment of the issues concerning Glass. He has received extensive training in investigative techniques in both the military and as an investigative journalist for the Associated Press in Boston, and has conducted investigations on both the federal and state levels. He testified that he first met with Sanderson, then Gates, and that he interviewed the people they recommended that he talk to.

24. Bullard conducted the interviews on February 26, 2018, and prepared a written report on the assessment of his findings, which included a determination that the employees felt they were being forced to work in a hostile work environment due to the threats of Glass. He stated that some of the workers he interviewed explained that, because of her conduct, they were considering leaving their employment with the Department. He said he conducted the interviews one-on-one, as Gates advised him that the women workers felt uncomfortable with others present hearing what they said, fearing that their statements would get back to Glass. He concluded that the witnesses he interviewed were consistent in describing an escalation of Glass' aggressive conduct, with an increase of her bullying and intimidating behavior, which was not being addressed by management. He said the people he targeted for interviews were those directly affected by their dealings with Glass, which were Joe Sanderson, Dana Gates, Jackie Watkins, Crystal Sorrell, Kellie Steele, and Michele Guenot. He stated that he was willing to interview Glass, but that she was not available due to her being placed on investigative leave, adding that he was told that she would have an opportunity in another manner to present her responses.

25. Bullard said he went into detail with Sorrell concerning her interaction with Glass and specifically her fears to go to the bathroom by herself for concern of a confrontation with Glass. He also discussed with Steele the details of her allegation that Glass grabbed her arm and threatened her at a procurement conference in Louisville. He concluded that most of the threats were "perceived intimidation." He also testified that he did not recall any warnings by management, whose reaction appeared to downplay the behavior of Glass as not threatening, only irritating.

26. **Michael Allen Jones** is the Executive Director of the Department of Military Affairs and the appointing authority. He acknowledged his signature on the notice to Glass that she was being placed on investigative leave. He said that allowing the employee to continue working during an investigation depended on the circumstances and issues raised and that he considered this a serious matter, as he believed a hostile work environment impacted employee safety. He stated that he depends on the Department's Directors to handle things locally until they reach a certain level and that he normally bases his decisions concerning results of

investigations on the input from his staff in the Department, and not on his own opinions. He stated that the Human Resources office had her employment records, including her evaluations.

27. Jones testified that once he received the information from the investigation, he reviewed everything he was given and felt there was sufficient information to go forward with termination of Glass. He said the Department gave her an opportunity for a pre-termination hearing to come in and present her response to the allegations and the investigation, but she did not respond, having her attorney present for her. In arriving at the decision to terminate Glass, he said he looked at everything he was given from the investigation. He felt that the investigation assessment of Bullard and the allegations raised in the email from Sanderson presented sufficient factors of abusive behavior, and the touching and twisting the arm of another employee, was sufficient to support a finding that Glass was creating a hostile work environment.

28. **Docia Megan Wilson** formerly worked for the Department until June 2017. She initially worked in the accounting section under the supervision of Jackie Watkins, and eventually she was transferred to the contracting department. She had previously worked with Glass in the Department of Mining and Minerals in the Energy and Environment Cabinet, and she occasionally utilized the assistance of Glass on how to proceed on matters. She stated they were friends, although they did not hang out together. Wilson said that their workload was very heavy and that such high levels of work led to mistakes. She testified that she was unhappy working for Watkins, as she was always criticizing her work production. When she was asked about problems she had with her attendance, Wilson responded that an unhappy employee looks for ways to not work.

29. **Patty Brown** retired from the Department in August 2018 after 31 years of service to the Commonwealth, most of which was with the Department of Military Affairs. She said her office in the Department was down the hall, from which she could see in Glass' office and that she could see other employees in her office. She stated she had no idea why the employees went into Glass' office, but that she never overheard any arguments or complaints. She also could view the women's bathroom from her office. However, she said she did not see everyone going in to the bathroom as she was too busy, but she never saw any women employees go to the bathroom together, nor was she aware of a buddy system.

30. Brown said that, on occasion, Watkins or Guenot, who would act as the approver when Watkins was not present, would reject her documentation, mostly on the basis for lack of receipts. She said she did not always agree with the rejection and would address the issue with them. She said that a few times her objections would be accepted. She also testified that she often saw Glass and Gates go to lunch together.

31. **Jamie Whiteside** has been employed with the Cabinet for Health and Family Services (CHFS) for the past four years, and was previously employed as a Program Coordinator with the Department for Military Affairs where she worked with Watkins and Sorrell. She said she previously knew Glass when she was working for the CHFS in the procurement section and that she would occasionally have to address questions to Glass.

32. Whiteside testified that she attended the procurement conference in Louisville and joined with the workers of the Department to go to lunch. She said that was the first time she had met Steele, who sat across from her during their lunch. When they concluded their meal, they all walked together back to the conference and that she never saw any incident happen between Steele and Glass.

33. **Chad Miller** left the Department of Military Affairs on January 15, 2018, before Glass was terminated. He spent 6 years working for the Department on the federal side and in the Construction Branch. His supervisor was Bruce Miller and he was in a separate chain of command from Glass. He said he knew Glass for about a year, as his office was directly across the hall from her, and they became acquaintances, but they did not work in the same group. He said that the group Glass worked with would occasionally do work with his group, although he was not clear what her role was. He also interacted with Watkins, who would approve or reject his contracts.

34. Miller said that employees under Watkins' supervision would sometimes vent their frustration about their workload and about Watkins, but he never heard any complaints about Glass. He also never overheard any comments about a buddy system among the women about going to the bathroom. He said that it was his observation that most of the workers in the Department enjoyed working with each other. He testified that he never overheard Watkins and Glass yelling and screaming at each other. He testified that he did not know about Glass' termination until she told him.

35. **Nydia Mercer-Rose** worked with the Department as a temporary employee for 20 years, then she spent her last two years with the Department as an Administrative Section Supervisor at the Greenville Training Center. She said she was part of the branch that was supervised by Watkins and that she worked with Glass. She testified that Glass acted as her supervisor, proofing her work and making corrections. She said Glass always explained the reason for the corrections, and that she would always agree with Glass. She stated that she had a close working relationship with Glass. She testified that they mostly communicated by telephone and emails, although she would come to Frankfort once a month to meet and work with Glass and the other staff. Mercer-Rose said she attended the procurement conference in Louisville, went to lunch with the Department employees, and that they returned to the conference together as a group. She testified that she was walking beside Glass and that it was uneventful.

36. **Leslie Glass** has worked for the Commonwealth of Kentucky since 2005. She started with the Department of Insurance and, in 2006, transferred to the Department of Workers Claims. In 2008, she worked for the Department of Natural Resources, but, in 2012, she transferred to CHFS. She began working with the Department of Military Affairs in 2016. She testified that for most of the 13 years she worked for the Commonwealth she was dealing mostly with contracts and procurements. She pointed out that, in all her years of working for the Commonwealth, she never received evaluations with any score below a "good" rating. In 2015, her evaluation rating from CHFS was 458, which translates as "Outstanding."

37. Glass testified that when she received the notice of investigative leave on February 9, 2018, she did not know what the investigation was about and the notice did not inform her of what she was alleged to have done. She then asked Joe Sanderson the reason for the leave notice. He responded that he did not know and that he had been instructed to not say anything to her about the investigation. She said no one ever talked to her about the alleged problems. She said that she first learned about the alleged problems when she received the certified letter of dismissal and that she was shocked when she learned of the charges against her.

38. Glass denied that she ever made a threat to blow the building up and that the first time she heard about the allegation was during her evaluation, which greatly alarmed her. She testified about the lunch incident resulting in the allegation from Steele, stating she was merely trying to get Steele's attention and touched her on the wrist, joking with her that she was cheating her out of a free lunch. She said that Watkins had said she was buying lunch for everybody and Steele responded that she was not going to pay. She denied grabbing Steele viciously or twisting her arm, claiming that they all walked back to the conference together and nobody said anything. Glass further denied ever making anyone cry.

39. Glass acknowledged that she had a disagreement with Watkins during her evaluation, but denied that voices were raised during the meeting and denied there was any cursing. She admitted that she took the documents when she left the evaluation meeting, telling Watkins that she would review them and return them to her. She said she had five working days to review the evaluation, and that she ended up signing the evaluation on February 5, 2018. She said that Gates was present during the evaluation meeting and that she said nothing. She testified that after the evaluation disagreement with Watkins, she thought things were better and that she wanted to get along with Watkins. She said that Sanderson referred them both to a KEAP session, which never raised the issue about her allegedly yelling at Watkins, but merely focused on "getting along."

40. Glass said that, during her discussion with Watkins concerning the workload, Watkins accused her of acting like she did not have the time to do the work. She said they had a back-and-forth disagreement, but that she never threw anything on Watkins' desk. She further denied knowing anything about Sorrell being afraid of her, noting that Sorrell was often in her office and never gave any indication of a problem between them. Nor was she aware that Sorrell required a buddy system to go to the bathroom. She said she was never aware that either Sorrell

or Steele were scared of her, nor was it ever brought to her attention that they did not want to talk to her.

41. Glass testified that she only went into the EMARS system on one occasion during Guenot's absence, when she was out of the office for two weeks, to get information from the spreadsheet to run her report. She stated that she told Guenot about it when she returned to the office and that Guenot and Watkins both seemed fine with the matter. She said that when she got the spreadsheet it was empty, that she only put five items on it, and did not alter anything.

42. Glass said that she talked with her coworkers every day and that she thought they were her friends. She said that when she got the letter of termination she was floored and that she denied all the allegations against her.

III. FINDINGS OF FACT

1. Leslie Glass started working for the Commonwealth of Kentucky in 2005 and spent 13 years employed in different agencies, principally preparing procurement documentation. She started working with the Department of Military Affairs in September 2016.

2. In mid-2017, Joe Sanderson, the Department's Director of Facilities supporting the Kentucky National Guard, began to receive verbal complaints about Glass' aggressive and intimidating behavior that was creating concern and fear among some of her coworkers. However, because none of the workers were willing to put their complaints or grievances about Glass in writing, he considered them to be hearsay and he did not take any action with Glass.

3. Upon learning of a yelling and cursing argument, on or about June 20, 2017, between Glass and her immediate supervisor, Jackie Watkins, concerning the amount of workload assigned to Glass, he ordered them to attend a Kentucky Employee Assistance Program (KEAP) meeting to work out their problems.

4. On August 1, 2017, Watkins performed a mid-year interim evaluation of Glass in which she reported that Glass needed to improve her communication and teamwork performance, specifically stating that "she needs to work on softening her communications with her supervisor and other branch staff." Sanderson reported that he was informed by Crystal Sorrell that Glass was very upset after receiving the review and threatened to "blow the place up" if she did not receive a more favorable year end evaluation.

5. After Glass received her Annual Employee Performance Evaluation from Watkins on January 29, 2018, communication became so strained between Watkins and Glass that Sanderson finally felt he had to take further action on the matter. On February 7, 2018, he forwarded an email to Crystal Simpson in the Department's personnel section informing her of problems created by Glass and requesting guidance as to his options.

6. On February 9, 2018, a letter was sent to Glass advising her that she was being placed on investigative leave, which was conducted by Stephen Phillip Bullard, the Department's EEO Coordinator and Investigator. Bullard reported his interviews and assessment of the allegations against Glass in a report dated February 26, 2018, following which, a letter dated February 28, 2018, signed by Michael A. Jones, the Department's Executive Director and appointing authority, was provided to Glass giving her notice of the intent to dismiss her and informing her of the charges against her. The letter cited the specific charges against her and charged her with violations of: 1) 101 KAR 2:095, Section 9, 2) 101 KAR 1:345, Section 1, and 3) creating a hostile work environment. Glass was given an opportunity to respond in a pre-termination hearing, but she did not respond to the allegations against her, leaving the matter to her attorney. Following that meeting, on March 22, 2018, Jones issued a letter of dismissal to Glass informing her that her employment with the Department was being terminated.

7. The dismissal letter alleged that since May 2017 she had acted in an intimidating and aggressive behavior towards her coworkers, requiring the Department's Branch Manager, Joe Sanderson, to refer her to the Kentucky Employee Assistance Program (KEAP) for counseling. This purportedly stemmed from the allegation by Watkins that Glass yelled and acted in an aggressive manner to the criticisms Watkins made concerning rejection of Glass' production on her workload, which Glass claimed was excessive and burdensome, caused stress, and contributed to creating the mistakes Watkins found. Crystal Sorrell and Kellie Steele shared the office next to Watkins and stated that they overheard the arguments and yelling between Watkins and Glass about the workload. Michele Guenot testified Watkins taught Glass how to do her job but that Glass continuously had difficulties with how Watkins told her to do her work. She said that, following a confrontation between Watkins and Glass in the summer of 2017, she became concerned about Glass' behavior. However, Chad Miller, who worked in the Department until January 2018, testified that he never heard any arguments, yelling, or screaming between Watkins and Glass and that it was his impression that all the employees in the Department got along very well. Also, Patty Brown, who worked in the Department until August 2018, never heard any yelling or screaming between Watkins and Glass, nor did she testify concerning overhearing any threats from Glass. It is also noteworthy that Sorrell testified that Jackie Watkins had made people mad with her criticisms of their work and that it was a "rocky work environment."

8. The second incident charged against Glass involved an incident where a group of workers in the Department were attending a procurement conference in Louisville in October 2017. They went together to a restaurant where Watkins offered to pay for the lunch, which was questioned by Steele because they all would receive reimbursement from the state. Steele alleged that caused Glass to become angry. Then while they were walking back to the conference, she said Glass grabbed her arm and twisted it behind her back, accusing her of trying to cheat her out of a free lunch. No other employee in the group reported seeing this incident. Guenot said she saw Glass walking behind Steele and that, when she later looked back at them as they were walking, she saw that Steele had a "deer in the headlights" look about her. However, she did not hear any threat by Glass and she thought nothing more about it. Jamie Whiteside, who worked at CHFS and walked to and from the restaurant with the group from the

Department, testified that she did not see the incident. Nor did any other employee in the group report such an incident. Joe Sanderson testified that since Steele refused to file a complaint or grievance against Glass, he considered the allegation to be hearsay and verbally insufficient. Bullard reported that Steele informed him that she was not physically hurt and did not think Glass intended to hurt her, just intimidate her. Glass testified that she merely touched Steele on the wrist, denied twisting her arm, and merely joked with her about cheating her out of a free lunch.

9. The third incident reported in the dismissal letter involved an allegation from Steele that Glass told them about how she made people cry at her previous employment and was hateful to them. Sorrell told Bullard that Glass enjoyed talking about her aggressive exploits, which she believed Glass would talk about to set an aggressive tone at work and set her dominance. Glass denied making these statements and the only former worker from Glass' previous places of employment called to testify was Jamie Whiteside, who worked with Glass at CHFS and did not testify about any issues with Glass or any alleged aggressive or intimidating behavior.

10. The fourth incident reported in the letter of dismissal was the allegation that Glass made a statement to Sorrell that she would blow the place up if she did not receive an improved annual performance evaluation. No other employee testified to overhearing this statement. Glass denied that she ever made a threat to blow the building up and said that the first time she heard about the allegation was during her evaluation, which greatly alarmed her.

11. The fifth incident reported in the letter of dismissal was an allegation from several of her coworkers that they observed Glass yelling and cussing at her coworkers, throwing documents on her coworkers' desks, and going through their desks. No testimony was presented at the hearing about Glass going through coworkers' offices, desks, or computers. Glass denied ever cursing at her coworkers and none of her coworkers testified concerning Glass cursing at them, going through coworkers' desks or computers. Glass and Watkins both testified that the confrontations between them were concerning the amount of the workload and manner in which it was completed.

12. The sixth incident reported in the dismissal letter was that Sorrell was so afraid of Glass that she was afraid to go to the bathroom by herself and that Sorrell was forced to implement a "buddy system" where Steele would join her because of their fear of a confrontation with Glass, who was often standing in the hall complaining about her job and the workload. However, Sorrell acknowledged that Glass' office was not across from the women's bathroom and that she never ran into Glass when going to the bathroom. Dana Gates testified that, when she was told that Sorrell had a buddy system to go with her to the bathroom, she thought the allegation was silly and unnecessary. Glass denied knowing anything about Sorrell being afraid of her, noting that Sorrell was often in her office and never gave any indication of a problem between them. Nor was Glass aware that Sorrell required a buddy system to go to the bathroom. She said she was never aware that Sorrell or Steele were scared of her, nor was it ever brought to her attention that they did not want to talk to her.

13. The seventh incident reported against Glass in the dismissal letter was that she admitted to Watkins that she altered Michele Guenot's spreadsheet in her computer without her permission, which required Guenot to start locking up her data. Glass testified that she only went into the EMARS computer system on one occasion during Guenot's two-week absence from the office. Glass explained that she had to access the spreadsheet to get information to run her report, that when she got the spreadsheet it was empty, and that she only put five items on it and did not alter anything. Glass told Guenot about it when she returned to the office and that Guenot and Watkins both seemed fine with the matter.

14. Most seriously, the dismissal letter concluded that the foregoing incidents also created a hostile work environment, which under 101 KAR 2:095, Section 9, and 101 KAR 1:345, Section 1, gave the Department authority to terminate her employment.

IV. CONCLUSIONS OF LAW

1. Kentucky Revised Statute (KRS) 18A.095(1) states that "a classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause."

2. 101 KAR 2:095, Section 9, deals with workplace violence, and states in pertinent part:

(1) Workplace violence shall be prohibited and shall include:

(a) The attempted, threatened, or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or

(b) A threatening statement, harassment, or behavior that gives a state employee or member of the general public reasonable cause to believe that his or her health or safety is at risk.

(2) Examples of prohibited workplace violence shall include:

(a) Threats of harm;

...

(c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;

...

(f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions that create a risk to the

health or safety of a state employee or the public or threatens or intimidates them.

(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

3. 101 KAR 1:345, "Disciplinary actions," is a general provision which gives appointing authorities means by which to address bad behavior or the unsatisfactory performance of duties by the employee, and provides, in pertinent part:

Section 1. General Provision. Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties.

Section 2. Dismissal.

(1) The notice required by KRS 18A.095(6) and (7) may be combined provided all requirements are satisfied.

(2) When the employee is notified, copies of the notice of intent to dismiss and the notice of dismissal or other penalization shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

Section 3. Demotion. When the employee is notified, copies of the notice of demotion shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

Section 4. Suspension.

(1) A suspension shall not exceed thirty (30) working days.

(2) An employee without status may also be suspended for a period not to exceed thirty (30) days and shall be entitled to the same provisions of notice contained in KRS 18A.095(8) with the exception of the right of appeal.

(3) When the employee is notified, copies of the notice of suspension shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee

4. The question in this case is whether the Department of Military Affairs provided sufficient probative evidence to show that it had just cause for the dismissal of Leslie Glass. In this case, the burden was on the Department to show such sufficient cause by a preponderance of the evidence. This requires an analysis of whether an individual poses a "direct threat" condition and a balancing of the risk against harm to the coworkers.

5. In this state, a civil service or similar job status is regarded as a vested right or, at least, is given the same protection as if it were. *City of Owensboro v. Board of Trustees*, 190 S.W.2d 1005 (Ky. 1945); *Hopwood v. City of Paducah*, 424 S.W.2d 134 (Ky. 1968).

6. KRS 18A.095(8) sets forth the notice requirements to be given a classified employee of pending disciplinary action, which are:

A classified employee with status who is demoted, suspended, or otherwise penalized shall be notified in writing of:

- (a) The demotion, suspension, or other penalization;
- (b) The effective date of the demotion, suspension, or other penalization;
- (c) The specific reason for the action including:
 - 1. The statutory or regulatory violation;
 - 2. The specific action or activity on which the demotion, suspension, or other penalization is based;
 - 3. The date, time, and place of the action or activity; and
 - 4. The name of the parties involved; and
- (d) That he or she has the right to appeal to the board within sixty (60) days, excluding the day that he or she received notification of the personnel action.

7. As a result of the incorporation of progressive discipline principles, a merit employee encountering difficulties is usually counseled, disciplined, if necessary, and put back to work. For a good employee, the disciplinary process is viewed as a training opportunity. Employers who fire employees based on mere allegations (i.e., unproven claims) of misconduct are engaging in employment practices that can be extremely costly to the Agency and to the Commonwealth as a whole. This case involves an employee, Leslie Glass, who the employer claimed to have acted inappropriately towards her coworkers, by intimidating them, causing them to have fear of her, and creating a hostile work environment. Glass has vehemently denied any wrongdoing. Her employer, the Department of Military Affairs, terminated her employment

despite Glass' statement that she has never engaged in the conduct about which the coworkers complained.

8. The Department failed to introduce any evidence, nor did it argue in its memoranda submitted to the Board, as to how the actions of the employee Glass rose to the level of creating a "hostile workplace." Generally speaking, the law concerning a hostile workplace focuses on the work environment or conditions created by an employer or supervisor in a discrimination charge. This is not a Title VII claim under the Civil Rights Act of 1964 and, therefore, reviewing cases interpreting Title VII is only helpful to the extent of defining "hostile workplace." *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993), has been adopted by the Kentucky Supreme Court as the standard for determining whether a work environment is hostile. *Ammerman v. Bd. of Educ.*, 30 S.W.3d 793, 798 (Ky. 2000). In *Harris*, the U.S. Supreme Court held that a workplace is hostile if the environment would reasonably be perceived and is perceived as hostile or abusive. Generally, to establish a hostile environment the court held that it must be shown that the offensive conduct was **so severe or pervasive** as to alter the conditions of the victim's employment and create an abusive working environment. *Harris, supra*. What the Department's actual focus was in its presentation of evidence and arguing the legal sanctions for her violation centered on whether Glass violated the aforesaid regulatory provision concerning "workplace violence."

9. Sorrell alleged that her ability to perform her job was unreasonably affected by Glass' hostile or abusive actions in the workplace. Sorrell testified she left the Department of Military Affairs because of Glass' conduct. Absent such allegations, no genuine issue of material fact existed as to Sorrell's hostile work environment claim, nor that Glass committed a violation of state regulatory mandates concerning workplace violence. However, Sorrell also testified that she left because of Jackie Watkins, whose criticisms of employees' work production had made people mad, and because it was a rocky work environment. She testified that she decided to leave the department because she was stuck in a position in which she did not want to be involved any longer. Sorrell admitted in her testimony that she was not a strong person and felt fearful of Glass, but she acknowledged that Glass never did anything to her and that she did not remember any cursing by Glass.

10. Steele alleged that she was also afraid of Glass. She cited the incident in Louisville walking back from a restaurant to the conference, when Glass allegedly grabbed her arm and twisted it behind her back. However, when asked by Sanderson to submit a written complaint or grievance, she refused to do so. Further, when she was interviewed by Bullard in his investigation of Glass, Steele informed him that she was not physically hurt and did not think Glass intended to hurt her, just intimidate her. Glass testified at the hearing that she merely touched Steele on the wrist and specifically denied twisting her arm. Glass said she was just joking with Steele about cheating her out of a free lunch. The other workers in the Department denied any feelings of a hostile work environment. Dana Gates testified that she never heard any threats from Glass and that she thought that Sorrell and Steele needing to invoke a buddy system when they went to the bathroom was silly and unnecessary. Gates also testified that she had good interactions with Glass and would occasionally chit-chat with her, and that she was

surprised when she learned that Glass was terminated. Patty Brown and Chad Miller testified that they never heard any arguments or threats. Miller also testified that he thought all the employees got along very well. Nydia Mercer-Rose testified that she never overheard any arguments or threats and that she walked back from the restaurant to the conference in Louisville next to Glass, which she described as uneventful. Bullard testified that he concluded that most of the alleged threats were "perceived intimidation."

11. This Hearing Officer, having weighed all the evidence and considered the law on the issues presented, concludes that there is insufficient proof to establish by a preponderance of the evidence that Glass created a hostile work environment, and, therefore, the Department has failed to establish just cause to terminate Glass for that basis.

12. The Hearing Officer turns to the issue of whether the conduct of Glass constitutes misconduct sufficient to invoke just cause for disciplinary action against her. A review of the case law in the Commonwealth of Kentucky discloses that the test for determining misconduct is whether the employee's actions evidenced a willful and wanton disregard of the employer's interests. See *Burch v. Taylor Drug Store Inc., et al.*, 965 S.W.2d 830, 835 (Ky. App. 1998); *Kentucky Unemployment Ins. Com'n v. Cecil*, 381 S.W.3d 238 (Ky. 2012).

13. Bullard, who conducted interviews and analysis of the complaints by the coworkers of Glass, testified that the pattern of behavior by Glass led to verbal confrontations with her supervisor and some of her coworkers. Bullard noted from the interviews that this conduct escalated through the majority of her employment with the Department. Bullard also noted that Glass' behavior was not properly addressed by management, who seemed to downplay her behavior in hopes that it was temporary, not enduring, and that it was not initially perceived as threatening, only irritating. The primary causes of Glass' escalating discontent was the level of workload she was given and the disagreement with her supervisor as to how the contract expenditures were to be documented. It is noted that the testimony of Mercer-Rose, whose work was supervised by Glass, was that Glass always explained the reason for the corrections made on her documentation and that she would always agree with Glass. It is further noted, Patty Brown also testified as to her objections with Watkins' rejection of her documentation.

14. Regardless of the failures of management of the Department to address the issues that they were presented with by the verbal complaints, the problems other employees had with the workload, and the manner in which they were supervised, the escalating vocal disagreements by Glass towards her supervisors constituted misconduct. This conduct is a violation of good behavior and satisfactory performance evidencing a willful and wanton disregard of the employer's interests, and is unbecoming of an employee of the Commonwealth of Kentucky entrusted by the citizens and taxpayers of the state to perform the duties to which she is assigned. An employer generally has neither an affirmative duty, nor is required to tolerate a mode of conduct which has the effect of reducing the efficiency of the employer's operation. *Coker v. Daniels*, 267 Ark. 1000, 593 S.W.2d 59 (Ark. App. 1980); *Kentucky Unemployment Ins. Com'n v. Stirrat*, 688 S.W.2d 750, (Ky. 1984). The evidence of the issues of the confrontations between an employee and the supervisor, and the belief of two employees that they had to go to the

bathroom as a buddy system, without question impacted the efficiency of the Department's operations and evidenced a willful and wanton disregard of the employer's interests. Under the aforesaid statutes and administrative regulations, and the case law of the Commonwealth of Kentucky, the Hearing Officer concludes that disciplinary action in the form of a fifteen-day suspension is appropriate.

15. It is the conclusion of this Hearing Officer that the dismissal imposed by the Department of Military Affairs against Leslie Glass was erroneous and without just cause. It is the further conclusion of this Hearing Officer that the evidence of the escalating vocal disagreements by Glass towards her supervisor, and allegations of confrontations involving a couple of coworkers, constituted misconduct evidencing a willful and wanton disregard of the employer's interests, and that, pursuant to 101 KAR 1:345, discipline is appropriate.

16. Lastly, the issue of the motion of Glass concerning the fact that she was not given proper notice of the alleged offenses, the dates, and the specific nature of the charges, is reviewed. The framework of the administrative law is derived from the Due Process Clauses of the U.S. Constitution which requires that state and federal agencies must provide procedural due process to individuals affected by their agency action. The core due process procedure required by both the Fifth and Fourteenth Amendments is "adequate notice." The Supreme Court of the United States has held that procedural due process similar to property rights may be created by state law. *Hewitt v. Helms*, 459 U.S. 460 (1983). This includes any infringement on individual's vested or property rights by requiring adequate and timely notice and an effective opportunity to be heard and to defend. *Mathews v. Eldridge*, 424 U.S. 319 (1976). Kentucky law governing administrative hearings and the provision of adequate and meaningful notice is governed by KRS 13B.050 (3). Also, KRS 18A.095 (2) and (8), requires that prior to dismissal, or other sanction, a classified employee with status shall be notified in writing of the intent to dismiss him, and lists the specific requirements to be provided in the notice. The statute refers to the written notice of intent to dismiss or impose other penalty, and does not address the matter concerning an investigation. Accordingly, the Hearing Officer concludes that the earlier decision by the Hearing Officer subsequent to the pre-hearing conference issued in the Interim Order on August 24, 2018, overruling the Motion was correct.

V. RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeals of **LESLIE GLASS VS. DEPARTMENT OF MILITARY AFFAIRS (APPEAL NOS. 2018-031 AND 2018-076)** be **SUSTAINED to the extent to the extent** that the dismissal is modified to a fifteen-day suspension. The Appellant should be reinstated to her previous position or a position of like pay and status with back pay except for the period of suspension and she should otherwise be made whole. **[KRS 18A.105 and 200 KAR 12:030.]**

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13.B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each Party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer E. Patrick Moores** this 20th day of March, 2019.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Charla R. Sands
Hon. Paul F. Fauri